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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,446	03/15/2004	Tracy Johnson	JOHN 02962 PTUS	1225
32233	7590	01/12/2005	EXAMINER	
STORM L.L.P. BANK OF AMERICA PLAZA 901 MAIN STREET, SUITE 7100 DALLAS, TX 75202			ABBOTT, YVONNE RENEE	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/800,446	JOHNSON, TRACY
	<b>Examiner</b>	<b>Art Unit</b>
	Yvonne R. Abbott	3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 October 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9, 11-13 and 15 is/are rejected.
- 7) Claim(s) 10 and 14 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 10/25/04 have been fully considered but they are not persuasive. Applicant's amendment is not considered to distinguish over the cited prior art in that the Walker reference discloses the claimed structure as outlined below. Furthermore, Applicant's addition of the phrase "generally rigid" as is pertains to the upstanding wall, is considered to be new matter not previously disclosed.

### ***Specification***

2. The amendment filed 10/25/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the addition in the specification and the claims that the "upstanding wall" is "generally rigid". Applicant states that "this feature is inherent in an upstanding wall if it is to stand up as disclosed and illustrated, however, this statement is refuted. The wall itself does not have to be rigid; for example, the underlying or supporting structure of the wall (i.e. not the wall itself) such as braces, brackets, rods, etc. can instead be what it generally rigid. Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (5,611,414). Walker shows a portable bed comprising: a generally laminar panel (6) including foldable cushioning pallet (40) which is generally rigid and rectangular, and at least partially covered on one side with material (41) capable of being comfortable for a pet lying on the panel; a hinge (50) formed in the laminar panel and dividing the panel into first and second co-planar portions on each side of the hinge, wherein the first and second portions can be folded toward one another into a closed position; an upstanding wall (10) extending along a periphery of the first portion of the laminar panel and proximal the hinge and shown to comprise portions (24, 28 and 32), wherein, in an open position, the upstanding wall encloses only the portion of the panel from which it extends and, in the closed position, the first and second portions of the panel and the upstanding wall define an enclosure in which items may be transported; at least one zipper closure (36) for securing the first and second portions of the panel in the closed position; and a handle (22) for transporting the pet bed with the panels in the closed position. With respect to Applicant's attempt to distinguish over the Walker reference by stating that the claimed invention has a

Art Unit: 3644

generally rigid upstanding wall (although this is considered new matter and not warranting treatment on the merits) and pointing out that Walker discloses that the "portions are intended to collapse underneath or alongside the cushioned bedding assembly 6. See Walker, Col. 4, lines 26 through 29" (Applicants Remarks), it should also be noted that Walker discloses that other more rigid or internal stiffening materials may be used (col. 3, lines 48-61).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6-8, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker. Walker shows a portable bed capable of use for a pet comprising a foldable panel which is made of sections with hinge(s) that connect edges of the sections and an upstanding wall extending along the periphery of one of the section. Walker, however, does not disclose that the sections are rectangular having a pair of long and short edges; nor does Walker disclose that the upstanding wall has a height approximately equal to the width of a medial section. With respect to the rectangular shape of the sections, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the sections of the Walker panel such that there are long and short edges, and the height of the upstanding wall be of a

dimension equal to the width of one of the sections since Walker discloses that various height and width dimensions could be used depending on what size bed one needed or what size traveling case one wished to carry (col. 6, lines 18-38).

7. Claims 3, 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Moore et al. (5,144,911). Walker shows a portable bed having a panel covered with removable bed clothing (41), however it is not specifically disclosed that the material is fleece. Moore et al. teach a bed system for a pet comprising a panel covered with a mat (16) made of a fleece material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to cover the bed of Walker with fleece material since it is well known that fleece is provides a soft and comfortable fabric on which to lay.

***Allowable Subject Matter***

8. Claims 10 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

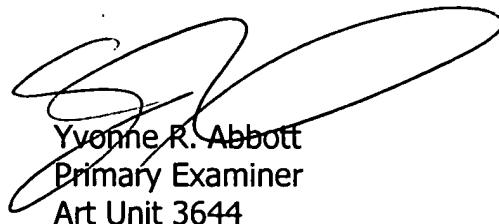
Art Unit: 3644

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on Mon-Thurs 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (703)305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott  
Primary Examiner  
Art Unit 3644